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DEPARTMENT OF INSURANCE  
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Sacramento, California 95814**

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**December 27, 2002**

**FINAL STATEMENT OF REASONS AND  
UPDATED INFORMATIVE DIGEST**

**COMMISSIONER'S REPORT ON UNDERSERVED COMMUNITIES**

**INTRODUCTION AND UPDATED INFORMATIVE DIGEST**

California Insurance Commissioner Harry W. Low has proposed amendments to Title 10, Sections 2646.6 through 2646.11, inclusive, California Code of Regulations, regarding data gathered by insurers and provided to the Department in connection with availability and affordability of insurance products in communities that the Commissioner has determined are underserved.

The purpose of these amendments is to implement, interpret and make specific the provisions of California Insurance Code, Division 1, Part 2, Chapter 9, Article 10, Section 1861.03.

California Insurance Code (CIC) Section 1861.10, part of Proposition 103, enacted by the voters in November of 1988, *inter alia*, made the business of insurance subject to California Civil Code sections 51 and 52, the Unruh Civil Rights Act (Unruh). Unruh provides, *inter alia*, prohibits arbitrary discrimination by businesses against their customers, other businesses and independent agents.

Currently, the regulation excludes the following data:

- data on policies written through the California Fair Access to Insurance Requirement (FAIR) plan;
- data on policies written through the California Automobile Assigned Risk Plan (CCARP);
- data from carriers writing less than ten million dollars in premium in any one of the lines of insurance covered by the regulation
- data on commercial policies having premium in excess of \$7500.00

These exclusions represent a combined total of 35% of the data that would otherwise be available. The exclusion for commercial policies in excess of \$7500.00 in premium represents approximately 20% of that line of insurance.

In addition, CCR 2646.7 and 2646.8 (added in 1996) had the effect of eliminating additional data by allowing carriers to "opt out" of any data gathering at all. As a result, the Commissioner's Report on Underserved Communities has become less and less effective as a tool to monitor the affordability and availability of insurance products in California.

## **SPECIFIC PURPOSE OF EACH AMENDMENT TO THE REGULATION AND NECESSITY**

The specific purpose of each amendment to the regulation and the rationale for the Commissioner's determination that each amendment is reasonably necessary to carry out the purpose for which it is proposed is set forth below.

### **Section 2646.6 Definitions**

Section 2646.6 provides definitions for certain terms within the context of the regulation. Currently, the regulation excludes the FAIR plan from reporting data on fire policies written pursuant to the plan. In 1999, the last year for which data has been completely compiled and analyzed by the Department's Statistical Analysis Bureau, the exclusion of FAIR plan data accounts for The Commissioner proposes to amend the definition of "insurer" to include reference to the California FAIR plan.

The rationale for adopting this amendment is to specify that, although the FAIR plan is not an "insurer" as that term is currently defined in the regulation, the FAIR plan is to gather and provide data to the Department on dwelling fire policies written pursuant to the plan.

### **Section 2646.6(a)**

Section 2646.6(a) sets forth which carriers and what lines of coverage are subject to the regulation, as well as how data is to be compiled and when and where data is to be submitted.

### **Specific Purpose**

The specific purposes of the proposed amendment to this subsection are as follows:

- to remove the ten million dollar (\$10,000,000.00) threshold on the amount of annual premium that a carrier must write prior to its being subject to the data gathering requirement;
- to exclude reporting of data for umbrella, excess or reinsurance coverages;
- to specify that the data should be reported according to the experience year on each line of business written and
- to eliminate the reference to a "computerized medium".

### **Rationale for Necessity**

#### **Eliminate \$10 million dollar threshold**

In 1999, the exclusion of carriers writing less than \$10,000,000.00 accounted for, *inter alia*, 46% of the total dwelling fire data that would otherwise have been received and accounted for 29% of 1999 commercial multiple peril policies data.

This elimination of the ten million-dollar threshold will ensure that the maximum amount of statistically significant data is provided to the Department with respect to the availability and affordability of insurance products in Underserved Communities for personal and commercial lines of insurance.

Exclusion of umbrella, excess and reinsurance coverages

The exclusion of umbrella, excess and reinsurance coverages avoids the gathering and reporting of unnecessary data. These coverages are captured in the data that carriers report for commercial multiple peril coverages under section (b)(1)(C) of the regulation.

Experience year

The specification that data should be reported on an experience year basis clarifies that data should not be reported on a calendar year basis.

Elimination of the reference to a "computerized medium"

The elimination of the reference to a "computerized medium" clarifies that many carriers elect to transfer the required data via electronic mail as opposed to computer disks.

**Amended Section 2646.6(b)(1)**

Section 2646.6(b) sets forth that data shall be compiled and maintained by the carrier as well as reported to the Department on a ZIP code basis. Subsection (b)(1) enumerates the specific coverages for which data must be gathered, compiled and reported. Subsection (b)(2) specifies that the Community Service Statement must contain information about the number of service offices by ZIP code. Subsection (b)(3) sets forth the specific information regarding agents that must be provided. Subsection (b)(4) sets forth requirements for carriers that use direct solicitation instead of agents. Subsection (b)(5) sets forth the requirement that information about agents speaking languages other than English must be gathered and reported. Subsection (b)(6) provides for gathering of data regarding the race, national origin and gender of policyholders. Subsections (b)(7) and (b)(8) specified certain additional information to be reported regarding applications received.

**Specific Purpose**

The specific purposes of the proposed amendment to this subsection would be to specify that carriers must maintain data in a manner that will allow them to report the required data to the Department, e.g., that carriers currently not keeping track of required policy data, or carriers keeping track of the required data "by hand", must compile the required data and/or transfer the hand written data into a format that can be transferred to the Department.

The proposed amendment to this section would also specify that carriers are to report written, as well as earned premium data to the Department. Written premium and written exposures allow the Department to compile and analyze information on claims and losses for inclusion in the Commissioner's Report on Underserved Communities (CRUC).

The proposed amendment to this section would also eliminate the requirement of gathering, compiling and reporting data for private passenger automobile physical damage (PPAPD); commercial automobile liability (CAL); commercial automobile physical damage (CAPD) and liability other than automobile lines of business (LOA).

This proposed amendment would also eliminate the exclusion for reporting commercial policies in excess of \$7,500 annual premium.

### **Rationale for Necessity**

#### **Inclusion of CAARP & FAIR Plan**

In some communities that the Commissioner has determined are underserved, CAARP policies account for approximately 30% of total personal automobile policies. The inclusion of data regarding policies issued through the California Automobile Assigned Risk Plan (CAARP) would provide the Commissioner with additional information necessary to the CRUC.

Further, dwelling fire policies written pursuant to the California Fair Access to Insurance Requirements (FAIR) plan have accounted for a greater and greater share of the market as the FAIR plan has been expanded over the last few years to provide coverage in areas where fire insurance is unavailable to homeowners through the voluntary market.

#### **Elimination of data for private passenger auto physical damage; commercial auto liability and commercial auto physical damage lines of business**

With respect to the elimination of private passenger auto physical damage (PPAPD) data, the private passenger auto liability (PPAL) data gathered pursuant to subsection (b)(1)(A) provides the Department with sufficient data to determine whether or not a company is serving a particular area without the necessity of gathering additional data on the PPAPD line of business.

With respect to commercial auto liability (CAL) and commercial auto physical damage (CAPD), the reporting of exposures is very difficult for carriers to capture accurately, due to the nature of rating and underwriting this line of business. The data currently gathered pursuant to subsection (b)(1)(C) is adequate to determine which carriers are offering commercial products in underserved communities. The liability other than auto (LO) line of business accounts for a very small percentage of the total market share.

#### **Elimination of \$7500 cap on commercial policies**

In 1999, the elimination of data on commercial policies in excess of \$7,500 annual premium accounted for 30% of the total market share of commercial data that would otherwise have been reported. This data is necessary to maintain the statistical significance of the CRUC.

### **Amended Section 2646.6(b)(2)**

#### **Specific Purpose**

This section specifies that carriers shall provide information regarding service offices by ZIP code.

### **Rationale for necessity**

This amendment is necessary to eliminate the redundant use of "marketing" from the list of services provided at offices for which data must be gathered. The regulation currently provides that the number of offices providing "sales" services must be reported.

### **Amended section 2646.6(b)(3) and (b)(5)**

#### **Specific Purpose**

The purpose of these amendments is to continue to gather information on the number of independent and employed agents by ZIP code.

### **Rationale for necessity**

The commissioner initially proposed to eliminate the gathering of agent data. However, as a result of comments received during the 45-day comment period, the Commissioner has reconsidered and will continue to gather agent data.

The reference to the Department's Statistical Plan has been deleted as redundant because the specified languages are set forth in the regulations. In addition, the Plan has been updated and is no longer dated June 2, 1995.

### **Amended section 2646.6(b)(6)**

#### **Specific Purpose**

The purpose of these amendments is to eliminate the requirement that carriers gather data on applicants and to specify that information is to be gathered instead on policyholders. This amendment also eliminates the reference to the Department's June 2, 1995 Statistical Plan for reasons discussed *supra* and specifies that a form for gathering this data is available on the Department's website. The specific reference to the Department's URL has been eliminated as the specific website address is subject to change,

### **Rationale for necessity**

The Commissioner proposes to amend the regulation to eliminate gathering information on declinations as discussed, *infra*. This amendment conforms this section of the regulations to section (b)(8) by referring only to existing policyholders, as opposed to 'potential policyholders', i.e. "applicants".

### **Section 2646.6(b)(7) & (8)**

**Specific Purpose:** The specific purpose of this amended subsection is to eliminate the requirement that insurers declining coverages to applicants in Underserved Communities must issue and retain copies of letters of declination.

**Rational for Necessity:** This amendment is necessary to implement the provisions of CIC 1861.03 in that, after analysis of the data gathered pursuant to the existing regulations, the Commissioner has determined that the nature of the insurance has business and the interface with consumers has changed to the point that this data can no longer be gathered in a statistically significant way. Most insurer interactions with applicants are through a computer interface used

by the agents in the application/underwriting process. The result is that carriers only receive applications that will ultimately be bound for underwriting. This process essentially eliminated "declinations".

#### **Amended Section 2646.6(c)(3)**

##### **Specific Purpose**

The specific purpose of this amended subsection is to eliminate one of the three existing criteria by which the commissioner may determine that a community is underserved: "members of the community have contacted three or more agents or companies directly and have been declined for insurance for which they were ready, willing, able and qualified to purchase" as well as the Commissioner's option to rely on "reports of insurers, agents, brokers, policyholders, applicants, or consumers" in making the determination that a community is underserved.

##### **Rational for Necessity**

This amendment is necessary to implement the provisions of CIC 1861.03 in that, after analysis of the data gathered pursuant to the existing regulations, the Commissioner has determined that this criterion is too vague to be useful in making annual determinations regarding the availability and affordability of insurance products in Underserved Communities.

#### **Amended Section 2646.6(d)**

##### **Specific Purpose**

The purpose of these amendments is to eliminate additional requirements associated with gathering information on applicants who were declined coverage.

##### **Rationale for necessity**

The Commissioner proposes to amend the regulation to eliminate gathering information on declinations as discussed, *supra*. This amendment conforms this section of the regulations to section (b)(8) by eliminating additional requirements that applied only to declinations.

#### **Amended Section 2646.6(e)(3) and (e)(4)**

##### **Specific Purpose and Rationale for Necessity**

The purpose of these amendments is to eliminate additional requirements associated with gathering information on offices, as those provisions have been deleted. This amended section also eliminates the requirement that direct writers provide information regarding number and percentage of direct mail and telephone solicitations in Underserved Communities.

#### **Section 2646.6(f)**

**Specific Purpose:** The specific purpose of this amended subsection is to eliminate the reference to enforcement of these regulations.

### **Rationale for Necessity**

The Department is currently in litigation, now pending before the California Supreme Court, with a number of carriers regarding issues relating to whether or not certain data gathered pursuant to this regulation is public. During the 45-day public comment period, several commenters argued that the Department's amendment of this regulation to provide for express enforcement and penalties for noncompliance was an effort to circumvent the authority of the court. This amendment is necessary to meet these allegations.

### **Amended Section 2646.7**

#### **Specific Purpose**

The specific purpose of this amendment is to delete the provision that allows carriers to submit Strategic Plans *in lieu* of the data required pursuant to Section 2646.6.

### **Rationale for Necessity**

After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of a Plan *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

### **Amended Section 2646.8**

#### **Specific Purpose**

The specific purpose of this amended subsection would be to delete the provision that allows carriers to submit Evidence Demonstrating an Existing Presence in Underserved Communities *in lieu* of the data required pursuant to Section 2646.6.

### **Rationale for Necessity**

After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

### **Amended Section 2646.9**

#### **Specific Purpose**

The specific purpose of this amended subsection would be to eliminate the provision for Consumer Participation in the Commissioner's decision to accept or reject a Plan or Evidence.

### **Rationale for Necessity**

After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

### **Amended Section 2646.10**

#### **Specific Purpose**

The specific purpose of this amended subsection would be to delete the provision setting forth the timelines for the Commissioner's review of Plans and Evidence.

### **Rationale for Necessity**

After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

### **Amended Section 2646.11**

#### **Specific Purpose**

The specific purpose of this amended subsection would be to delete the provision regarding remedial action to be taken against carriers that fail to comply with Section 2646.7 or Section 2646.8.

### **Rationale for Necessity**

After analysis of a number of years' worth of data, the Commissioner has determined that the existing provision allowing for submission of Plans or Evidence *in lieu* of data undercuts the statistical significance of the data received and therefore, impedes the Commissioner's ability to make accurate findings regarding affordability and availability of insurance products in Underserved Communities.

### **SUMMARY OF AND RESPONSE TO PUBLIC COMMENT**

The Department's summary of and response to public comment is separately included in this rulemaking file and incorporated herein by this reference.

### **IDENTIFICATION OF STUDIES**

The Commissioner has not relied upon technical, theoretical, or empirical studies or reports in proposing these regulations. However, the Commissioner has relied on the two NAIC models referenced in this Final Statement of Reasons.

### **SPECIFIC ACTIONS, PROCEDURES, TECHNOLOGIES OR EQUIPMENT**

Adoption of these regulations would not mandate the use of specific technologies or equipment or prescribe specific actions or procedures.

### ALTERNATIVES

As set forth in the responses to comments on the proposed regulations and elsewhere in this rulemaking file, the Commissioner has determined that no reasonable alternative exists to carry out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

### MANDATES

The regulations do not impose a mandate on local agencies or school districts.

### ECONOMIC IMPACT ON BUSINESS

The Commissioner has determined that the proposed regulations will not have a significant adverse economic impact on businesses because licensees are required to comply with similar federal requirements set forth in the Gramm-Leach-Bliley Financial Services Modernization Act (15 U.S.C., Subchapter I) and with California's existing privacy laws. To the extent economic impacts are imposed on businesses, those impacts are necessary to ensure adequate privacy protections for Californians. The Commissioner has adopted many of the public comments to attempt to minimize the impact on business to the extent consistent with ensuring adequate privacy protections.

### FORM 399

The Commissioner has determined that the changes made to the proposed regulations after issuance of the originally proposed regulation text do not have a fiscal impact to state agencies, local agencies and school districts or federal funding. Therefore, the Fiscal Impact Statement (Form 399), signed December 5, 2001, is still accurate.